

AMENDED IN SENATE JUNE 17, 2002

AMENDED IN SENATE MAY 28, 2002

AMENDED IN ASSEMBLY APRIL 11, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 1860**

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**Introduced by Assembly Member Migden  
(Coauthors: Assembly Members Alquist, Frommer, Jackson, and  
Koretz)**

January 31, 2002

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An act to amend Section 13823.11 of the Penal Code, relating to sexual assault victims.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1860, as amended, Migden. Sexual assault victim: pregnancy counseling: emergency contraception.

Existing law sets forth minimum standards for the examination and treatment of victims of sexual assault, including the taking of a baseline gonorrhea culture, a syphilis serology, and specimens for a pregnancy test, if indicated by the history of contact.

This bill would provide, in addition, that where indicated by the history of contact, a female victim of sexual assault shall be provided with the option of postcoital contraception by a physician or other health care provider, and postcoital contraception shall be dispensed by a physician or other health care provider upon the request of the victim; ~~the cost of which shall be borne by private insurance of the victim or public assistance to which the victim is entitled. Because these changes to the law would increase the duties of local health care professionals;~~

~~this bill would impose a state-mandated local program upon local government.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

~~Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ no. State-mandated local program: ~~yes~~ no.~~

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 13823.11 of the Penal Code is amended
- 2 to read:
- 3 13823.11. The minimum standards for the examination and
- 4 treatment of victims of sexual assault or attempted sexual assault,
- 5 including child molestation and the collection and preservation of
- 6 evidence therefrom include all of the following:
- 7 (a) Law enforcement authorities shall be notified.
- 8 (b) In conducting the physical examination, the outline
- 9 indicated in the form adopted pursuant to subdivision (c) of
- 10 Section 13823.5 shall be followed.
- 11 (c) Consent for a physical examination, treatment, and
- 12 collection of evidence shall be obtained.
- 13 (1) Consent to an examination for evidence of sexual assault
- 14 shall be obtained prior to the examination of a victim of sexual
- 15 assault and shall include separate written documentation of
- 16 consent to each of the following:
- 17 (A) Examination for the presence of injuries sustained as a
- 18 result of the assault.
- 19 (B) Examination for evidence of sexual assault and collection
- 20 of physical evidence.
- 21 (C) Photographs of injuries.



(2) Consent to treatment shall be obtained in accordance with usual hospital policy.

(3) A victim of sexual assault shall be informed that he or she may refuse to consent to an examination for evidence of sexual assault, including the collection of physical evidence, but that a refusal is not a ground for denial of treatment of injuries and for possible pregnancy and sexually transmitted diseases, if the person wishes to obtain treatment and consents thereto.

(4) Pursuant to Chapter 3 (commencing with Section 6920) of Part 4 of Division 11 of the Family Code, a minor may consent to hospital, medical, and surgical care related to a sexual assault without the consent of a parent or guardian.

(5) In cases of known or suspected child abuse, the consent of the parents or legal guardian is not required. In the case of suspected child abuse and nonconsenting parents, the consent of the local agency providing child protective services or the local law enforcement agency shall be obtained. Local procedures regarding obtaining consent for the examination and treatment of, and the collection of evidence from, children from child protective authorities shall be followed.

(d) A history of sexual assault shall be taken.

The history obtained in conjunction with the examination for evidence of sexual assault shall follow the outline of the form established pursuant to subdivision (c) of Section 13823.5 and shall include all of the following:

(1) A history of the circumstances of the assault.

(2) For a child, any previous history of child sexual abuse and an explanation of injuries, if different from that given by parent or person accompanying the child.

(3) Physical injuries reported.

(4) Sexual acts reported, whether or not ejaculation is suspected, and whether or not a condom or lubricant was used.

(5) Record of relevant medical history.

(e) (1) ~~Where~~ *If* indicated by the history of contact, a female victim of sexual assault shall be provided *with* the option of postcoital contraception by a physician or other health care provider.

(2) ~~(A)~~ Postcoital contraception shall be dispensed by a physician or other health care provider upon the request of the victim.

~~(B) The cost of the postcoital contraception shall be borne by either the private insurance of the victim or the public assistance to which the victim is entitled, or both.~~

(f) Each adult and minor victim of sexual assault who consents to a medical examination for collection of evidentiary material shall have a physical examination which includes, but is not limited to, all of the following:

(1) Inspection of the clothing, body, and external genitalia for injuries and foreign materials.

(2) Examination of the mouth, vagina, cervix, penis, anus, and rectum, as indicated.

(3) Documentation of injuries and evidence collected.

~~Prepubital~~

*Prepubertal* children shall not have internal vaginal or anal examinations unless absolutely necessary (this does not preclude careful collection of evidence using a swab).

(g) The collection of physical evidence shall conform to the following procedures:

(1) Each victim of sexual assault who consents to an examination for collection of evidence shall have the following items of evidence collected, except where he or she specifically objects:

(A) Clothing worn during assault.

(B) Foreign materials revealed by an examination of the clothing, body, external genitalia, and pubic hair combings.

(C) Swabs and slides from the mouth, vagina, rectum, and penis, as indicated, to determine the presence or absence of sperm and sperm motility, and for genetic marker typing.

(2) Each victim of sexual assault who consents to an examination for the collection of evidence shall have reference specimens taken, except when he or she specifically objects thereto. A reference specimen is a standard from which to obtain baseline information (for example: pubic and head hair, blood, and saliva for genetic marker typing). These specimens shall be taken in accordance with the standards of the local criminalistics laboratory.

(3) A baseline gonorrhea culture, and syphilis serology, shall be taken, if indicated by the history of contact. Specimens for a pregnancy test shall be taken, if indicated by the history of contact.

1 (4) (A) ~~Where~~ *If* indicated by the history of contact, a female  
2 victim of sexual assault shall be provided *with* the option of  
3 postcoital contraception by a physician or other health care  
4 provider.

5 (B) (i) Postcoital contraception shall be dispensed by a  
6 physician or other health care provider upon the request of the  
7 victim.

8 (ii) ~~The cost of the postcoital contraception shall be borne by~~  
9 ~~either the private insurance of the victim or the public assistance~~  
10 ~~to which the victim is entitled, or both.~~

11 (h) Preservation and disposition of physical evidence shall  
12 conform to the following procedures:

13 (1) All swabs and slides shall be air-dried prior to packaging.

14 (2) All items of evidence including laboratory specimens shall  
15 be clearly labeled as to the identity of the source and the identity  
16 of the person collecting them.

17 (3) The evidence shall have a form attached which documents  
18 its chain of custody and shall be properly sealed.

19 (4) The evidence shall be turned over to the proper law  
20 enforcement agency.

21 ~~SEC. 2. Notwithstanding Section 17610 of the Government~~  
22 ~~Code, if the Commission on State Mandates determines that this~~  
23 ~~act contains costs mandated by the state, reimbursement to local~~  
24 ~~agencies and school districts for those costs shall be made pursuant~~  
25 ~~to Part 7 (commencing with Section 17500) of Division 4 of Title~~  
26 ~~2 of the Government Code. If the statewide cost of the claim for~~  
27 ~~reimbursement does not exceed one million dollars (\$1,000,000),~~  
28 ~~reimbursement shall be made from the State Mandates Claims~~  
29 ~~Fund.~~